

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEJUAN ANTHONY CARLTON,)	
)	CASE NO. 5:17CV1400
Petitioner,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
SHAE HARRIS,)	
)	<u>MEMORANDUM OF OPINION</u>
Respondent.)	<u>AND ORDER</u>

Pro se Petitioner DeJuan Anthony Carlton filed this Petition for Writ of Habeas Corpus pursuant to [28 U.S.C. § 2254](#). [ECF No. 1](#). For the reasons that follow, the Court denies the petition.

I. Background

Petitioner is currently incarcerated in the Warren Correctional Institution, having been convicted of aggravated murder in 2011 in the Stark County Court of Common Pleas. Petitioner is serving a sentence of twenty-three years to life in prison. The Ohio Court of Appeals denied his Motion for Leave to File a Delayed Appeal in 2016. Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to [28 U.S.C. § 2241](#), but it was dismissed without prejudice as improperly filed under [§ 2241](#) rather than [§ 2254](#). He refiled his Petition under [§ 2254](#), and that Petition is now before the Court. Petitioner asserts his conviction is invalid because the Judge did not sign the conviction and sentencing journal entry. He seeks release from prison.

II. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which amended [28 U.S.C. § 2254](#), was signed into law on April 24, 1996 and applies to Habeas Corpus Petitions filed after that effective date. [Lindh v. Murphy](#), 521 U.S. 320, 336 (1997); see [Woodford v. Garceau](#), 538 U.S. 202, 210 (2003); [Barker v. Yukins](#), 199 F.3d 867, 871 (6th Cir. 1999). Congress enacted the AEDPA “to reduce delays in the execution of state and federal criminal sentences, and ‘to further the principles of comity, finality, and federalism.’” [Woodford](#), 538 U.S. at 206 (citing [Williams v. Taylor](#), 529 U.S. 362, 436 (2000)). Consistent with this goal, when reviewing an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, a factual determinations by the state court carry a presumption of correctness. [Wilkins v. Timmerman-Cooper](#), 512 F.3d 768, 774-76 (6th Cir. 2008). The petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence. [28 U.S.C. § 2254\(e\)\(1\)](#). A federal court, therefore, may not grant habeas relief on any claim that was adjudicated on the merits in any state court unless the adjudication of the claim either: “(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” [28 U.S.C. § 2254\(d\)](#); [Wilkins](#), 512 F.3d at 774 -76.

A decision is contrary to clearly established law under [§ 2254\(d\)\(1\)](#) when it is “diametrically different, opposite in character or nature, or mutually opposed” to federal law as determined by the Supreme Court of the United States. [Williams](#), 529 U.S. at 405. In order to have an “unreasonable

(5:17CV1400)

application of ... clearly established Federal law,” the state court decision must be “objectively unreasonable,” not merely erroneous or incorrect. [*Id.* at 409](#). Furthermore, it must be contrary to holdings of the Supreme Court, as opposed to dicta. [*Id.* at 415](#).

A state court’s determination of fact will be unreasonable under [§ 2254\(d\)\(2\)](#) only if it represents a “clear factual error.” [*Wiggins v. Smith*, 539 U.S. 510, 528-29 \(2003\)](#). In other words, a state court’s determination of facts is unreasonable if its finding conflict with clear and convincing evidence to the contrary. [*Id.*](#) “This standard requires the federal courts to give considerable deference to state-court decisions.” [*Ferensic v. Birkett*, 501 F.3d 469, 472 \(6th Cir. 2007\)](#). AEDPA essentially requires federal courts to leave a state court judgment alone unless the judgment in place is “based on an error grave enough to be called ‘unreasonable.’” [*Herbert v. Billy*, 160 F.3d 1131, 1135 \(6th Cir.1998\)](#).

III. Procedural Barriers to Habeas Review

Before a federal court will review the merits of a petition for a writ of habeas corpus, a Petitioner must overcome several procedural hurdles. Specifically, the petitioner must surmount the barriers of exhaustion, procedural default, and time limitation.

As a general rule, a state prisoner must exhaust all possible state remedies or have no remaining state remedies before a federal court will review a petition for a writ of habeas corpus. [28 U.S.C. § 2254\(b\) and \(c\)](#); see [*Baldwin v. Reese*, 541 U.S. 27 \(2004\)](#). Exhaustion is fulfilled once a state supreme court provides a convicted defendant a full and fair opportunity to review his or her claims on the merits. [*O’Sullivan v. Boerckel*, 526 U.S. 838 \(1999\)](#); [*Rust v. Zent*, 17 F.3d 155, 160 \(6th Cir. 1994\)](#); [*Manning v. Alexander*, 912 F.2d 878, 881 \(6th Cir. 1990\)](#).

(5:17CV1400)

To be properly exhausted, each claim must have been “fairly presented” to the state courts. See e.g. [*Wagner v. Smith*, 581 F.3d 410, 414 \(6th Cir. 2009\)](#); [*Frazier v. Huffman*, 343 F.3d 780, 797 \(6th Cir. 2003\)](#). Fair presentation requires that the state courts be given the opportunity to see both the factual and legal basis for each claim. [*Wagner*, 581 F.3d at 414](#). Indeed, in determining whether a petitioner “fairly presented” a federal constitutional claim to the state courts, courts should consider whether the petitioner (1) phrased the federal claim in terms of the pertinent constitutional law or in terms sufficiently particular to allege a denial of the specific constitutional right in question; (2) relied upon federal cases employing the constitutional analysis in question; (3) relied upon state cases employing the federal constitutional analysis in question; or (4) alleged facts well within the mainstream of [the pertinent] constitutional law.” See [*Hicks v. Straub*, 377 F.3d 538, 553 \(6th Cir. 2004\)](#) (citation omitted) abrogated on other grounds by [*Peoples v. Lafler*, 734 F.3d 503 \(6th Cir. 2013\)](#). For the claim to be exhausted, it must be presented to the state courts as a federal constitutional issue, not merely as an issue arising under state law. [*Koontz v. Glossa*, 731 F.2d 365, 369 \(6th Cir. 1984\)](#). Moreover, the claim must be presented to the state courts under the same legal theory in which it is later presented in federal court. [*Wong v. Money*, 142 F.3d 313, 322 \(6th Cir. 1998\)](#). It cannot rest on a legal theory separate and distinct from the one previously considered and rejected in state court. *Id.* This does not mean that the applicant must recite “chapter and verse” of constitutional law, but the applicant is required to make a specific showing of the alleged claim. [*Wagner*, 581 F.3d at 414](#).

The procedural default doctrine serves to bar review of federal claims that a state court has declined to address because the Petitioner did not comply with a state procedural requirement.

(5:17CV1400)

Wainwright v. Sykes, 433 U.S. 72, 87 (1977). In these cases, the state judgment is not based on a resolution of federal constitutional law, but instead “rests on independent and adequate state procedural grounds.” Coleman v. Thompson, 501 U.S. 722, 730 (1991). When the last explained state court decision rests upon procedural default as an “alternative ground,” a federal district court is not required to reach the merits of a habeas petition. McBee v. Abramajtyis, 929 F.2d 264, 265 (6th Cir. 1991). In determining whether a state court has addressed the merits of a petitioner’s claim, federal courts must rely upon the presumption that there is no independent and adequate state procedural grounds for a state court decision absent a clear statement to the contrary. See Coleman, 501 U.S. at 735.

To determine if a claim is procedurally defaulted the court must determine whether: (1) there is a state procedural rule that is applicable to the petitioner’s claim and that the petitioner failed to comply with the rule; (2) the state courts actually enforced the state procedural sanction; and (3) the state procedural forfeiture is an adequate and independent state ground upon which the state can rely to foreclose review of a federal constitutional claim. See Maupin v. Smith, 785 F.2d 135, 138 (6th Cir. 1986). A claim that is procedurally defaulted in state court will not be reviewed by a federal court unless a petitioner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or can demonstrate that failure to consider the claim will result in a fundamental miscarriage of justice. Coleman, 501 U.S. at 751. “Cause” is a legitimate excuse for the default, and “prejudice” is actual harm resulting from the alleged constitutional violation. See Magby v. Wawrzaszek, 741 F.2d 240, 244 (9th Cir. 1984). If a petitioner fails to show cause for his procedural default, the Court need not address the issue of prejudice. See Smith v. Murray, 477 U.S.

(5:17CV1400)

[527 \(1986\)](#).

Simply stated, a federal court may review only federal claims that were evaluated on the merits by a state court. Claims that were not so evaluated, either because they were never presented to the state courts (i.e., exhausted) or because they were not properly presented to the state courts (i.e., were procedurally defaulted), are generally not cognizable on federal habeas review.

IV. Discussion

Petitioner challenges the validity of his sentencing journal entry stating it was never signed by the trial judge. He contends his judgment of conviction never took effect. Petitioner did not raise this ground in the Ohio courts. This issue could have been raised on direct appeal. Petitioner waited five years to file a Motion for Delayed Appeal. The Ohio Court of Appeals denied his Motion. The claim could also have been raised in a post-judgment motion at the trial court. The docket from his criminal case indicates Petitioner has not filed any post judgment motions. Therefore, Petitioner has not exhausted his claim.

As explained above, a petitioner cannot obtain federal habeas relief unless he has completely exhausted his available state court remedies to the state's highest court. [Buell v. Mitchell, 274 F.3d 337, 349 \(6th Cir. 2001\)](#); [28 U.S.C. § 2254\(b\)\(1\)\(A\)](#). The United States Supreme Court has emphasized that the "interests of comity and federalism dictate that state courts must have the first opportunity to decide a Petitioner's claim," since "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation." [Rhines v. Weber, 544 U.S. 269, 273-74 \(2005\)](#)(citations omitted). Accordingly, when a habeas petition contains unexhausted claims, there

(5:17CV1400)

is a “strong presumption” in favor of requiring a petitioner to pursue his available state remedies. [*Granberry v. Greer*, 481 U.S. 129, 131 \(1987\)](#); *see also* [*O’Guinn v. Dutton*, 88 F.3d 1409, 1412 \(6th Cir. 1996\)](#) (stating that “the Supreme Court has been quite clear that exhaustion is the preferred avenue and that exceptions are to be for narrow purposes only”).

Nevertheless, the Court need not wait for a petitioner’s claim to be exhausted if it determines that a return to state court would be futile. Although stated as a denial of due process, his ground for relief is a matter of state law. What the State of Ohio recognizes as a valid judgment entry under [*Ohio Criminal Rule 32\(c\)*](#) is a question of Ohio law, not federal constitutional law. A claim based solely on an error of state law is not redressable through the federal habeas process. [*Hutchison v. Marshall*, 744 F.2d 44, 46-47 \(6th Cir. 1984\)](#).

V. Conclusion

Accordingly, the Petition for a Writ of Habeas Corpus is denied, and this action is dismissed pursuant to Rule 4 of the [Rules Governing Section 2254 Cases](#). Furthermore, the Court certifies pursuant to [28 U.S.C. §1915\(a\)\(3\)](#) that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. [28 U.S.C. § 2253](#); [Fed.R.App.P. 22\(b\)](#).

IT IS SO ORDERED.

December 15, 2017
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge